

The CORPORATION JOURNAL

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Special Announcement

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The CORPORATION JOURNAL

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DECEMBER 1951---JANUARY 1952

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To repeat the Treasurer's question to his company's attorney via telephone, "What is a subpoena duces tecum?"

"Have you been served with one?"

"Yes."

"How come?"

"I don't know. As near as I can figure it out, Paul Bryson's heirs are having a squabble over his will. But I don't see how that affects us."

"He held stock in your company, didn't he?"

"Well, sure. He was one of the company's founders."

"Then the present ownership of the shares is probably being contested and the court wants a look at the company's stock transfer books. Send the subpoena over and let me have a look at it. And you better check to see that those records are in A-1 order. If they aren't, there may be trouble."

Could you produce your company's stock transfer books suddenly, and with full confidence? You can when C T acts as your company's Transfer Agent.



unlicensed foreign corporations

Maintenance of Suit by Assignees

IN FORTY-ONE STATES, unlicensed foreign corporations which enter into contracts locally while doing business there, are barred from maintenance of suits thereon in the state courts. This prohibition continues in effect until qualification in twenty-four states. In the remaining seventeen states of this group, even if qualification is effected, the inability to sue continues thereafter as to such contracts. The seven states which appear to place no statutory barrier of this kind in the way of unlicensed foreign corporations doing business within them are: Delaware, Georgia, Kansas, Kentucky, Nebraska, North Carolina and South Carolina.

From time to time, this question arises in connection with one or more of the forty-one states first mentioned: If such an unlicensed foreign corporation assigns a claim to another corporation, not under a like disability, or to an individual, is the assignee in any better position to assert the claim than the unlicensed assignor?

The assignees of such an unlicensed foreign corporation are bracketed with it in the statutes of fourteen states. There, the restrictions upon the maintenance of suit would appear to bar suits by assignees to the same extent that the privilege is withheld from the unlicensed corporation. In seven of these fourteen states, the unlicensed corporation and its assignees are denied the right to enforce contracts so entered into within them by that corporation—even though it subsequently qualifies. These states are: Alabama, Iowa, New

York, South Dakota, Utah, Vermont and Wisconsin. In the seven remaining states in which such assignees are specifically mentioned, it would appear that the prohibition against the bringing of suit would continue only so long as the foreign corporation remains unlicensed. These seven states are: Florida, Illinois, Maryland, Minnesota, North Dakota, Oklahoma and Rhode Island.

In Arizona, every act done by a foreign corporation is made void by statute, while in Arkansas an unlicensed foreign corporation cannot make any contract in the state which can be enforced by it, either in law or in equity, and qualification subsequent to the date of the contract or after the institution of suit will not have the effect of validating the contract.

In the remaining twenty-five of the forty-one states, where there is no mention of the status of an assignee in the statutes, there appears to be little or no litigation to test the rights, if any, of such an assignee. Quite possibly this situation obtains through a general assumption on the part of counsel that an assignee's position might be no better than that of its assignor.

As to the status of assignees of such an unlicensed foreign corporation in the Federal Courts, with reference to causes of action arising in the forty-one states, it may be anticipated that Federal Courts sitting in these states could be expected to apply, so far as state statutes and rulings are available, the same restrictions which the assignees would find applicable to them in litigation which

would arise in the state courts, by reason of the ruling of the Supreme Court of the United States in *Woods v. Interstate Realty Co.*, 337 U. S. 535, 69 S. Ct. 1235. There it was held, in a suit based on diversity of citizenship, that an un-

licensed foreign corporation, doing business in a state, which was barred by state law from suing in the state courts because of failure to qualify, was barred, to the same extent, from suing in a Federal Court sitting in that state.



domestic corporations

DELAWARE

Amendment, cutting off of preemptive rights, upheld.

Plaintiff, a minority stockholder, sought to have declared invalid an amendment to defendant's certificate of incorporation divesting the stockholders of preemptive rights to certain stock. The amendment had been approved by an affirmative vote of the holders of a majority of the common stock. Plaintiff argued that the amendment was invalid because it deprived her and other stockholders of their "vested" rights. It was conceded that under Section 5 of the General Corporation Law the provision sought to be enacted by amendment could have been included in the certificate originally. The Court of Chancery, New Castle County, considered the question whether this could be done by amendment under Section 26 of that law, which permits amendment of the

certificate of incorporation by changing "the designations, preferences, or relative, participating, optional, or other special rights of the shares." The court pondered whether the language "other special rights" embraced preemptive rights and concluded that these rights were within this classification and were "legally cut off on the basis of authority granted by Section 26."

Gottlieb v. Heyden Chemical Corporation, Court of Chancery, New Castle County, October 8, 1951. Robert C. Barab of Wilmington, for plaintiff. Richard F. Corroon of Berl, Potter and Anderson of Wilmington, and George Rowe, Jr., of New York City, for defendant. CCH Req. No. 461133; 83 A. 2d 595.

Profit sharing plan, approved by three disinterested directors and five interested directors, upheld, under circumstances where by-laws provided for quorum of three directors.

A question presented was whether defendant corporation was to be enjoined from paying money under a profit shar-

ing plan authorized by the board of directors, which had not been ratified by the stockholders. The beneficiaries of

the plan were officers, executive personnel and members of the Executive Committee. At the directors' meeting at which the plan was adopted, five directors, interested as beneficiaries, were present and three disinterested directors attended. All eight voted for the plan. The by-laws provided that at all meetings of the board, three of the directors were necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the directors present constituted the act of the board, provided there was a quorum. The defendant corporation contended that the plan was validly adopted by a disinterested quorum of directors.

The Court of Chancery, New Castle County, observed that three disinterested directors were present and voted for the adoption of the plan and that five interested directors were also present and voted for it, and that it was clear that a majority of a disinterested quorum of directors voted for the plan and that their action was therefore legal insofar as the point before the court was concerned, unless the presence and votes of the interested directors were of importance. It noted that the courts in other jurisdictions are not in apparent agreement on the point. "However," remarked the court, "I believe the presence and votes of interested directors without more (though perhaps undesirable) should not affect the validity of corporate action taken by a majority of a disinterested quorum of

directors. "It is ignoring the realities of life to believe that the physical presence or absence of interested directors at the meeting is of decisive importance. If the interested directors can influence the disinterested directors they will do so whether they are present or not and whether they vote or not. Also, since the votes of interested directors may not be counted for purpose of determining validity it would seem logical that those directors should not be counted for purposes of determining what constitutes a majority. I conclude that the profit sharing plan was validly adopted insofar as its corporate regularity is concerned."

The court also gave consideration to plaintiffs' contentions that a stock option plan, approved by the stockholders, under which five directors and certain officers and employees were the beneficiaries, was invalid for lack of consideration. After an examination of the plan, the court concluded that, viewed alone, it was not invalid for lack of consideration under the circumstances.

Kerbs et al. v. California Eastern Airways, Inc., 83 A. 2d 473. Arthur G. Logan of Logan, Marvel & Boggs of Wilmington, for plaintiffs. Walter R. Barry and George F. Mason, Jr., of Coudert Brothers, New York City, and David F. Anderson of Berl, Potter & Anderson of Wilmington, for defendant. Commerce Clearing House Court Decisions Requisition No. 460878.

NEW YORK

Suit of minority stockholders dismissed under circumstances where corporation was revived several years after its term of existence had expired.

The fifty-year term of existence of defendant corporation expired February 20, 1942, but it continued to do busi-

ness to and including the year 1947. At that time, it filed a certificate of revival pursuant to Section 49 of the General

Corporation Law, as added in 1944. Plaintiffs, minority stockholders, opposed the revival of the corporate existence and asked for dissolution of the corporation or appraisal of their stock.

The Supreme Court, Appellate Division, Fourth Department, affirmed a judgment dismissing the suit, ruling (1) that the 1944 statute embraced corporations whose existence had expired prior to the passage of that act; (2) that there was no implied statutory right of the minority to have their stock appraised under the circumstances; (3) that the legislature did not exceed its

powers when it enacted Section 49 in 1944 and made it applicable to a corporation whose term of existence had expired; and (4) that, on the record, the plaintiffs had not established facts entitling them to equitable relief by having a determination that there should be an appraisal of their stock.

Garzo et al. v. Maid of the Mist Steamboat Co. et al., 106 N. Y. S. 2d 4. Setel & Block (Adrian Block, of counsel), of Buffalo, for plaintiffs-appellants. Franchot, Runals, Cohen, Taylor & Mallam (Paul P. Cohen, of counsel), of Niagara Falls, for defendants-respondents.

Defendant, sued by a plaintiff corporation, ruled without status to attack propriety of institution of suit by plaintiff's board of directors or executive committee.

In an action for damages for breach of contract by a corporation against another corporation, the defendant moved to dismiss the suit on the ground that it had not been authorized by the plaintiff corporation; also, that if authorized by the board of directors or by the executive committee, such action was invalid as proper notice of the meeting of the board was not given and, in addition, the executive committee was without power to act as it did. In denying the motion to dismiss the action and finding defendant without status to attack it, the New York Supreme Court, Special Term, New York County, Part I, remarked:

"This is a matter relating to the internal affairs and management of a corporation and I do not quite gather how a total stranger and third party, like this defendant, can assail the validity of such action of the board or executive committee or interfere with the internal

affairs and management of the corporation. This defendant is not a stockholder of the corporate plaintiff but is a stranger, a defendant in an action brought by plaintiff to recover damages for breach of contract. The internal affairs and management of plaintiff are none of the defendant's concern. Only a stockholder, officer or director of the corporate plaintiff may question the validity of the action of its directors or officers or of its agencies, like a committee."

A. B. C. Publications, Inc. v. New York Times Co.,* 103 N. Y. S. 2d 693. Peter W. Quinn of New York City, for plaintiff. Lord, Day & Lord of New York City, for defendant; Woodson D. Scott of New York City, of counsel.

* The full text of this opinion is printed in the *New York Corporation Law Reporter*, page 9585.

OREGON

Majority stockholders ruled under no duty to inform minority of contemplated sale of majority stock.

Plaintiffs were former minority stockholders of a bank. The defendant, with others had owned the majority stock. A purchaser, desiring to buy the entire outstanding stock, approached defendant, who indicated he would deal only with regard to the majority stock and that the purchaser would be required to deal separately with the minority holders. These were paid \$220 per share for their stock, which had a book value of \$200. The defendant and his associates were subsequently paid \$460 per share for their majority stock by the same purchaser. Plaintiffs sued to recover damages for alleged fraud on the part of the defendant.

A judgment in favor of the defendant was affirmed by the Supreme Court of Oregon, which noted that defendant and his associates had nothing whatso-

ever to do, directly or indirectly, with the sale of the stock of the minority stockholders, who, in the sale of their stock acted freely, at arm's length and of their own volition; also, that there was no duty on the part of defendant to apprise the minority stockholders of the offer he received. The higher court observed: "The fact that Smith et al. received more for their stock than the minority is no evidence of fraud, since it is generally recognized that the stock of majority stockholders is of more value than that of the minority."

Tryon et al. v. Smith, 229 P. 2d 251. Ralph E. Moody of Salem, for appellants. Charles A. Hart (Hugh L. Biggs and Hart, Spencer, McCulloch, Rockwood & Davies, on the brief), of Portland, for respondent.



foreign corporations

CANAL ZONE

Service upon Panama corporation upheld where made upon its designated agent and where corporation owned property in the Canal Zone.

Plaintiffs, residents of the Canal Zone, instituted suit in the United States District Court for the District of the Canal Zone against defendant Republic of Panama corporation to recover damages for injuries sustained in Colon, Repub-

lic of Panama, through alleged negligence of an employee of defendant. That court sustained a motion to quash service. Upon appeal, the United States Court of Appeals, Fifth Circuit, reversed this judgment, applying the gen-

eral rule that, where the action is, as in this instance, transitory, courts anywhere will entertain jurisdiction if service may be had upon the defendant. Service was in this instance made upon the executive secretary of the Panama Canal, who had been designated by defendant as its agent for the service of process. The validity of the service was not questioned by the company. The court regarded the allegations of the complaint as sufficient to show the corporation was doing business in the Canal Zone to warrant the inference

that it was present there, under circumstances where it was indicated that it had property within the jurisdiction of the court and that the agent had authority to receive service of process.

Carmack et al. v. Panama Coca Cola Bottling Co., 190 F. 2d 382. Donald J. McNevin of Ancon, Canal Zone, for appellant. Cicero C. Sessions, Richard B. Montgomery, Jr., of New Orleans, La., Gilberto Arias and Harmodio Arias of Panama City, Rep. of Panama, L. S. Carrington of Ancon, Canal Zone, for respondent.

NEW YORK

Furnishing certain services and materials to defendant through plaintiff corporation's eastern representative, who "did this type of work on many occasions," held not doing business so as to require qualification.

Plaintiff, an Illinois corporation not licensed in New York, sued defendant in the Supreme Court, Westchester County, to recover for work and services performed and materials furnished. The plaintiff's proof showed that this had been done through its eastern representative who "did this type of work on many occasions." Defendant contended that this established a continuous course of business in the state and that, under Section 218 of the General Corporation Law, plaintiff was barred from enforcing its contract with respect to the services and materials sued upon.

The court gave judgment for the plaintiff, remarking: "The question presented in the case at bar is whether or not the plaintiff was doing business in this state within the meaning of the statute. The crucial test with respect to 'doing business' does not consist of an isolated transaction within the state or the transshipment of material from a

home office, pursuant to orders taken by a representative within the state, but it is the establishment of a branch office or an agency within our state limits, having capital invested here and carrying on a regular business of some kind. (*N. Y. Architectural Terra-Cotta v. Williams*, 102 App. Div. 11, aff'd 184 N. Y., 579; and *Inter. Fuel & Iron Corp'n v. Donner Steel Co.*, 242 N. Y., 224). In the light of the foregoing test, it is this court's opinion that the proof presented in the case at bar fails to establish that the plaintiff was 'doing business' in this state, within the meaning of the statute."

F. B. Redington Co. v. Clover Tobacco Co., Inc., * 126 N. Y. L. J. 63; New York Supreme Court, Westchester County, July 11, 1951. Commerce Clearing House Court Decisions Requisition No. 457848.

* The full text of this opinion is printed in the CCH New York Corporation Law Reporter, page 9689.

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Service of process upon unlicensed foreign corporation upheld, where made upon managing agent in charge of local sales office.

The United States District Court, Southern District of New York, denied defendant unlicensed foreign corporation's motion to dismiss suit for lack of personal jurisdiction over it. The court concluded that the company was doing business so as to be subject to service of process under circumstances where service was made upon its Eastern sales manager, who, with two salesmen, solicited orders through a small office in New York City, where a stenographer was employed and certain files kept. The office address was listed in the telephone and building directories, but was not on the office door. Orders taken were submitted to approval in Chicago, from which point

the local personnel was paid. There was no local bank account. The denial of the sales manager, at the time of service that he was not the "manager" of the defendant company, was regarded as not important by the court, "since he was 'managing agent' *pro hac vice*, and in fact he was in charge of the office."

Joseph Gugenheim Co. v. Belmont Radio Corp.,* United States District Court, Southern District of New York, August 31, 1951. Commerce Clearing House Court Decisions Requisition No. 461918.

* The full text of this opinion is printed in the CCH New York Corporation Law Reporter, page 9720.

Foreign corporation, acting through exclusive local sales agent, ruled doing business so as to be subject to service of process.

Defendant foreign corporation moved to dismiss suit, in the United States District Court, Southern District of New York, for lack of personal jurisdiction over it. The corporation had an exclusive sales agent, the plaintiff, to sell its entire production. This agent maintained an office in New York, employing two salespeople and a secretary at his own expense. The corporate defendant's name was placed on the office door and in building and telephone directories with its acquiescence. The New York office address was listed on the stationery, order forms, etc., of the corporation. The individual defendant used the office to meet buyers. According to contract, orders were not subject to

acceptance in New Jersey. The corporate defendant had no employees, expenses, merchandise or bank account in New York.

The motion to dismiss the suit was denied, the court regarding the corporation as present for the purpose of the suit.

Cowan v. Skierski,* United States District Court, Southern District of New York, June 17, 1951. Commerce Clearing House Court Decisions Requisition No. 458833.

* The full text of this opinion is printed in the CCH New York Corporation Law Reporter, page 9710.





NORTH CAROLINA

Foreign corporation, contracting in North Carolina for manufacture of material to be shipped to its customers, having an inspecting agent and a business or managing agent with broad authority, ruled doing business and subject to service of process.

Defendant New York corporation, not licensed in North Carolina, entered a special appearance and moved to vacate and dismiss purported service of summons and process upon it in an action on contract between it and the plaintiff. The contract provided for the manufacture of cabinets by the plaintiff. A similar contract was entered into with another North Carolina manufacturer. Upon completion of the cabinets and the combining, by the manufacturers, of sewing machine parts, shipments were to be made by the manufacturers to the customers of the defendant. An agent of defendant acted as inspecting agent in the state. Service was made upon another person who was defendant's managing agent and business agent in the state, who was instructed

to settle and adjust the subject matter of the action and clothed with exclusive supervision and control over defendant's business operations in North Carolina.

The Supreme Court of North Carolina affirmed a judgment upholding the service, regarding the defendant as doing business in the state and the agent served as a proper process agent.

Troy Lumber Co. v. State Sewing Machine Corporation,* 64 S. E. 2d 415. David H. Armstrong of Troy, for plaintiff appellee. Jones & Jones of Rockingham, for defendant appellant.

* The full text of this opinion is printed in the **State Tax Reporter**, North Carolina, page 351.

PENNSYLVANIA

Proxy relating to stock of a Delaware company, coupled with an interest, held not revocable.

The individual defendant sold certain shares of stock of the corporate defendant, a Delaware company, to the plaintiff under an agreement whereby the shares were to be held by the individual defendant as collateral security for the performance of plaintiff's undertaking to pay the purchase price, in order to insure that the defendant would be employed by the corporation for his lifetime at a stipulated salary and that the defendant would have voting rights to the stock for life. The agreement also provided that the stock

was to be delivered to the plaintiff on the death of the defendant.

The Supreme Court of Pennsylvania in this suit wherein the plaintiff sought to compel defendant to deliver to him the shares of stock in defendant corporation registered in defendant's name, and to enjoin the latter from voting the shares at any meeting of the company, observed that the legality of an agreement concerning the voting rights of corporate stock was to be adjudged by the law of the state of incorporation,

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which in this instance was Delaware. Under that law, the court concluded, that the proxy given by the plaintiff was irrevocable, being coupled with an interest.

Deibler v. Chas. H. Elliott Co. et al., 81 A. 2d 557. Francis Hopkinson, Henry S. Drinker and Drinker, Biddle & Reath of Philadelphia, for appellant. Philip C. Herr of Philadelphia, for appellee.

State Supreme Court, while finding it unnecessary to consider doing business question, reverses, on other grounds, county court judgment involving holding that unlicensed foreign engineering company was not doing business so as to be required to be qualified.

In *Alan Porter Lee, Inc. v. Du-Rite Products Company, Inc.*, 43 Berks County Law Journal 49, (The Corporation Journal, April, 1951, page 312), the Court of Common Pleas of Berks County held that an unlicensed foreign personal service engineering corporation, performing its principal work in another state, was not doing business in Pennsylvania so as to be required to be qualified.

Upon appeal, the Supreme Court of Pennsylvania has reversed the judgment of the county court on other

grounds, finding it unnecessary to consider whether the corporation was doing such business in the state as to require its registration before filing a lien or whether it was precluded from recovering for the services claimed.

Alan Porter Lee, Inc. v. Du-Rite Products Co., Inc. et al., 79 A. 2d 218. John A. Moss, John A. Clark and Moss, Rieser & Bingaman of Reading, for appellant. Dawson H. Muth and Body, Muth, Rhoda & Stoudt of Reading, for appellees.



taxation

DISTRICT OF COLUMBIA

All sales made through local factors and one-half of sales to District customers, other than sales made through factors, ruled subject to tax, as received from District sources.

Petitioner, a Maine corporation, with no office in the District, effected shipments of its products into the District of Columbia by truck to customers and to wholesalers who acted as factors for it. A number of salesmen resided in

the District, acting under a sales manager with headquarters in another state and small orders received by them were turned over to the factors to be filled by them. Other orders were received by the company out of the District direct

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from local customers. The company's 1948 corporation-franchise tax return showed no income taxable by the District. A deficiency assessment, paid by petitioner, plus interest, as calculated by the assessor, was determined according to the ratio of petitioner's sales to District customers to total sales, the fraction so ascertained being applied to petitioner's total net income from all of its sales.

The Board of Tax Appeals for the District of Columbia concluded that the amount of all sales made by petitioner through the factors in the District was

income from District sources, and subject to taxation. Also that one-half of the amount of sales, where title to goods sold passed outside the District, with the exception of sales made through the factors, was attributable to business carried on or engaged in within the District and, therefore, subject to tax.

Lever Brothers Company v. District of Columbia,* Board of Tax Appeals for the District of Columbia, September 6, 1951.

* The full text of this opinion is printed in the **District of Columbia Tax Reporter**, page 1723.

Warehousing of goods in District regarded as giving rise to franchise tax liability.

Petitioner, a Delaware corporation resisting payment of a District of Columbia franchise tax on the ground that none of its income for the year in question arose from sources within the District, sold merchandise to customers in the District through a Maryland corporation as its agent. That company had no office or place of business in the District. It sold non-competitive merchandise for sixteen concerns and had seven non-resident agents covering the District. Orders secured by the agent were sent to Rochester, New York, for approval and normally filled by shipment from Rochester or Philadelphia. On occasion, however, orders for District customers were filled through the use of pool-car shipments, in order to obtain the benefit of lower freight rates.

This merchandise was consigned to the petitioner, in care of a warehouse in the District, which unloaded it and stored it until it was called for by the respective purchasers. None of this merchandise as shipped was marked for particular customers.

The Board of Tax Appeals for the District ruled that petitioner was engaged in trade and business within the District and received income from sources within the District so as to be subject to taxation.

Atlantis Sales Corporation v. District of Columbia,* Board of Tax Appeals for the District, August 14, 1951.

* The full text of this opinion is printed in the **CCH District of Columbia Tax Reporter**, page 1720.

MISSISSIPPI

Privilege tax upheld, where levied upon a foreign corporation soliciting business for its laundry in another state, measured according to number of vehicles used in taxing state.

Appellee, a foreign steam laundry cleaning corporation, having no laundry in

Mississippi, sent ten trucks into eight counties in Mississippi soliciting laun-

dry, which it carried to Memphis, Tennessee, servicing and returning it. A privilege tax of \$50 was paid on the driver of each truck, totaling \$500, which the corporation sought to recover. Section 45, subsections (t) and (y), Chapter 138, Laws of 1944, imposed the tax "upon each person soliciting business for a laundry not licensed in this state as such, in each county, \$50," and provided for the tax to be paid on each vehicle used. The corporation contended that it was not liable for the tax because its agents were engaged solely in interstate commerce, and also that the section discriminated against interstate commerce because another provision of law taxing those operating laundries in Mississippi were taxed at lower rates.

The Mississippi Supreme Court reversed a judgment in favor of the com-

pany, ruling that the tax applied to it and was not a tax on interstate commerce, but was a tax on a person soliciting business for a laundry not licensed in the state, a local activity which applied to residents and non-residents alike.

Stone v. Memphis Steam Laundry Cleaner, Inc.,* Mississippi Supreme Court, June 11, 1951. J. H. Sumrall of Jackson, for appellant. Clifton & Tual, J. W. Kirkpatrick and Watkins & Eager of Jackson, for appellee. Commerce Clearing House Court Decisions Requisition No. 455932. (Appeal filed in the Supreme Court of the United States, August 17, 1951; Docket No. 253. Jurisdiction noted, October 8, 1951.)

* The full text of this opinion is printed in the *State Tax Reporter*, Mississippi, page 7630.

NEBRASKA

Property in transit in interstate commerce through taxing state ruled to acquire no situs for ad valorem tax purposes.

The question concerned the validity of an ad valorem property tax assessment upon the grain owned by plaintiff Delaware corporation, with its principal office in Minnesota and a branch office in Omaha, Nebraska. It was engaged in the business of buying, selling, storing and cleaning grain. It had no terminal, storage or country elevators in Nebraska. The grain sought to be taxed had contact with Nebraska only by being in transit through the state, either prior to or at the time of purchase in another state, payment being made out of moneys on deposit in an Omaha bank.

The Nebraska Supreme Court, upon rehearing, held that the assessment upon the grain was void, and, not having acquired a situs in the state, neither

the grain, nor the investment of a grain broker in such grain was subject to an ad valorem tax, as property in transit in interstate commerce through the state only as an incident to its transfer to some other state acquires no situs for taxation.

Archer-Daniels-Midland Co. v. Board of Equalization of Douglas County,* Nebraska Supreme Court, July 16, 1951. Abrahams, Kaslow & Carnazzo of Omaha, for appellant. James J. Fitzgerald, Henry C. Winters and Eugene F. Fitzgerald, for appellee. Commerce Clearing House Court Decisions Requisition No. 458637.

* The full text of this opinion is printed in the *State Tax Reporter*, Nebraska, page 2572.

WASHINGTON

State Supreme Court applies tests in Federal Supreme Court Norton Company case to determine taxability of proceeds of interstate sales under state business and occupation tax.

Appellant company sought to enjoin the collection of business and occupation taxes, involving shipments into the state in interstate commerce under five classifications, effected through numerous and varied local selling activities, the company engaging in no manufacturing in the state. In three of the disputed groups, Washington business was channeled through the company's local outlets and this was regarded as sufficient to make the transactions constitutionally taxable under the ruling by the Supreme Court of the United States in *Norton Company v. Department of Revenue of Illinois*, 71 S. Ct. 377, in February, 1951, (*The Corporation Journal*, April, 1951, page 314). There, a Massachusetts corporation, with an office and warehouse in Illinois, was held taxable by the Supreme Court of the United States for retailers' Occupation tax purposes, on all Illinois orders except those sent by Illinois customers direct to the Massachusetts office of the company and filled from there by shipment directly to Illinois customers. Transactions in the latter classification with respect to Washington were regarded as not taxable under the Washington business and occupation tax.

A final group of transactions which were regarded as taxable because of

intervention by a Washington office of the company, included orders for merchandise, not available in Washington, mailed by the purchaser to an Oregon office and referred for approval to the Washington office before shipment from Oregon to the purchaser in Washington. The Washington office was regarded as performing a service essential to the completion of the sales, which was an activity sufficient to tie the sales to the Washington business of the company and to enable the state to tax the proceeds.

B. F. Goodrich Co. v. Washington,* Washington Supreme Court May 15, 1951, rehearing denied June 26, 1951. Hile, Huff & Shucklin, for appellant. The Attorney General and C. John Newlands, Assistant, for respondent and cross-appellants. Commerce Clearing House Court Decisions Requisition No. 455216. (*Petition for writ of certiorari filed in the Supreme Court of the United States, September 21, 1951; Docket Nos. 344 and 345.*)

* The full text of this opinion is printed in the **State Tax Reporter**, Washington, page 6828.



state legislation

California—Inactive California corporations are made subject to the franchise tax by Chapter 218.

The provisions governing the appointment of a statutory agent for domestic and foreign corporations have been amended to permit the designation of a corporation as such process agent. (Chapter 628.)

Connecticut—H. B. 1382 extends the operation of the sales and use taxes to June 30, 1953.

S. B. 113 amends the provisions relating to allocation of the corporation business or income tax so as to provide that if a taxpayer does not maintain a permanent or continuous place of business without the state, other than its statutory office, its entire net income shall be subject to tax in Connecticut.

Delaware—S. B. 269 permits the introduction of photostatic copies of business records in evidence. H. B. 437 increases the fees charged by the Secretary of State in certain instances in connection with certificates of dissolution and for affixing seal to certified copies. H. B. 515 increases the rates of the Annual Franchise Tax of Delaware companies. H. B. 515 increases the initial fee of foreign corporations and provides for the filing of an Annual Report by foreign corporations on or before June 30, 1952, and annually thereafter.

S. B. 227 provides for the consolidation or merger of non-stock organized for profit or not for profit, with stock corporations.

Iowa—Capital stock of foreign manufacturing companies having their main operating offices and principal factories in Iowa is made exempt from the moneys and credits tax by H. B. 27.

Ohio—H. B. 438 amends Sec. 8625-3, exempting from the operation of the Foreign Corporation Act, corporations engaged in Ohio solely in interstate commerce, so as to include specifically "the installation, demonstration or repair of machinery or equipment sold by them in interstate commerce, by engineers or employees especially experienced as to such machinery or equipment, as part thereof."

H. B. 619 enlarges the penalties applicable to foreign corporations transacting business without a license.

Oklahoma—H. B. 537 provides a special optional method of taxation in lieu of the ad valorem taxation of new industries.

Pennsylvania—H. B. 1349 has postponed the time for foreign corporations which qualify to do business to file their first bonus report, and make their first payment of bonus, from the time of qualifying to 30 days after the issuance of the certificate of authority to do business.

Wisconsin—A. B. 534 provides for the expiration of the Privilege Dividend Tax on December 31, 1951.



appealed to the supreme court

*The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.**

OCTOBER 1951 TERM

MISSISSIPPI. Docket No. 253. *Memphis Steam Laundry Cleaner, Inc. v. Stone*, Mississippi Supreme Court, June 11, 1951. (The Corporation Journal, December, 1951, page 54.) Privilege tax applied to soliciting of business for out-of-state laundry—interstate commerce. Appeal filed, August 17, 1951. Jurisdiction noted, October 8, 1951.

NEW YORK. Docket No. 285. *Guttmann v. Illinois Central Railroad Company*, 189 F. 2d 927. (The Corporation Journal, November, 1951, page 28.) Discretion of directors in declaring non-cumulative preferred dividends. Petition for writ of certiorari filed, August 28, 1951. Certiorari denied, November 5, 1951.

NEW YORK. Docket No. 360. *Katz v. R. Hoe & Co., Inc. et al.*, 99 N. Y. S. 2d 853, 899; action dismissed, 278 Misc. 766; motion for leave to appeal denied, July 11, 1951, 100 N. E. 2d 196. (The Corporation Journal, October, 1951, page 7.) Corporate reorganization. Petition for writ of certiorari filed, October 1, 1951.

OHIO. Docket No. 85. *Perkins v. Benguet Consolidated Mining Company*, 93 N. E. 2d 33. (The Corporation Journal, June, 1951, page 349.) Unlicensed foreign corporation—doing business—service of process—suit involving recovery of dividends on stock. Petition for writ of certiorari filed, May 29, 1951. Certiorari granted, October 8, 1951.

OHIO. Docket No. 184. *Standard Oil Co. v. Peck et al.*, 155 O. S. 61. (The Corporation Journal, November, 1951, page 34.) Property taxes on boats and barges of an Ohio company used outside the state and machinery and equipment in process of construction. Appeal filed, July 9, 1951. Jurisdiction noted, October 8, 1951.

TENNESSEE. Docket Nos. 186 and 187. *Carbide & Carbon Chemicals Corp. v. Carson*, STC ¶250-130. (The Corporation Journal, November, 1951, page 36.) State sales and use taxes.—Federal cost-plus-fixed-fee contracts. Petitions for writs of certiorari filed, July 13, 1951. Certiorari granted and cases transferred to the summary docket, October 15, 1951.

WASHINGTON. Docket Nos. 344 and 345. *B. F. Goodrich Co. v. Washington*, Washington Supreme Court, May 15, 1951 and June 26, 1951. (The Corporation Journal, December, 1951, page 56.) State business and occupation tax—interstate commerce. Petition for writ of certiorari filed, September 21, 1951. Certiorari denied, November 13, 1951.

* Data compiled from CCH U. S. Supreme Court Bulletin, 1951-1952.



regulations and rulings

Arizona—Under the statute placing a privilege tax upon the business of advertising by radio, the state cannot tax the gross proceeds of sales or gross income from national advertising originating outside the state without violating the commerce clause, but the state can tax the gross proceeds of sales or gross income from local or intrastate advertising. It would of course be necessary to arrive at a proper and valid allocation of the gross proceeds of sales or gross income from the particular local business as distinguished from the national business or that derived from interstate commerce. (Opinion of the Attorney General to the Arizona State Tax Commission, State Tax Reporter, Arizona, ¶ 64-010.)

California—Board of Equalization Ruling No. 55, dealing with the taxability of sales of property delivered in interstate and foreign commerce, has been amended to provide that sales of property are taxable when shipped from outside the state to the purchaser in the state if (1) the seller's branch office or other place of business in the state is utilized in any way, as in receiving the order or distributing the goods, or (2) the order for the goods is given in the state to an agent connected with a branch office or other place of business of the seller in the state. (State Tax Reporter, California, ¶ 60-204.)

General—As a new year approaches and the qualification of corporations to do business in new states is under consideration, counsel has found that a delay in effecting qualification and in the commencement of business activities in certain states until after January 1 may postpone, for a year, liability for the filing of franchise and income tax returns, and the payment of corresponding taxes, which would otherwise be due early in the new year. Such a delay may also bring about a postponement, for a year, in the preparation of returns of information and withholding at the source, annual reports, personal property tax returns, chain store tax applications and any corresponding payments.

Georgia—A foreign association which is required to comply with the corporate laws of its home state must qualify as a foreign corporation to do business in Georgia where it maintains an office and place of doing business in Georgia. (Opinion of the Attorney General to the Director, Property and License Tax Unit, State Tax Reporter, Georgia, ¶ 3-003.)

Minnesota—The mortgage registration fee must be paid again when an extension of a mortgage is to be recorded. The only time the registration fee need not be paid for recording a mortgage extension is when the mortgage and the extension are recorded or registered simultaneously. (Opinion of the Attorney General, State Tax Reporter, Minnesota, ¶ 56-011.)



some important matters

For December and January

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama — Annual Application Fee for permit to do business due on or before February 1.—Domestic and Foreign Corporations.

Alaska — Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

Delaware — Annual Report due on or before first Tuesday in January.—Domestic Corporations.

District of Columbia — Annual Report published and filed between January 1 and January 20.—Domestic Corporations.

Application for license in connection with District. Franchise (Income) Tax due before January 1.—Domestic and Foreign Corporations.

Georgia — Annual License Tax Report due on or before January 1.—Domestic and Foreign Corporations.

Iowa — Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

Louisiana — Annual Report due February 1.—Domestic Corporations.

Missouri — Annual Franchise Tax due on or before December 31.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

New Hampshire — Annual Maintenance Fee due on first business day of January.—Foreign Corporations.

South Carolina — Annual Statement due January 31.—Foreign Corporations.

South Dakota — Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

United States — Fourth Installment of Income Tax due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

West Virginia — Annual Business and Occupation (Gross Sales) Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.

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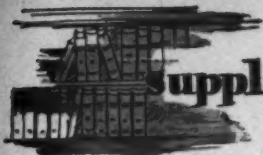
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supplementary literature

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- Delaware Corporations (1951 Edition).** Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.
- What Constitutes Doing Business (1951 Edition).** A 192-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."
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- Some Contracts Have False Teeth.** Interesting case-histories showing advisability of getting lawyer's advice before contracting for work outside home state, even for federal government.
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- When a Corporation Is P. W. O. L.** A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.
- We've Always Got Along This Way.** A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employee suddenly found themselves in trouble.

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